

(4) there are compelling reasons for reconsideration of an important Board rule or policy.

I. SUMMARY OF ARGUMENT

This matter involves the Union's petition to represent a bargaining unit of employees located at Detrex's Ashtabula, Ohio plant. Ashtabula County is a rural county with less than one hundred thousand residents. All parties, and the Director, agree that Ashtabula County is at or near the bottom of Ohio's counties in terms of positivity rate, Covid-19 deaths, and confirmed Covid-19 cases.

As recognized in the Decision, the plant at issue manufactures chemicals and the employees in the bargaining unit are essential workers who have worked throughout the Covid-19 Pandemic. However, despite the fact that the bargaining unit employees will be working their normal work schedules in February, the Decision holds that they cannot vote during work hours – they have to participate in this important election via mail due to purported safety concerns.

Based on the date of the Union's petition, the election in this matter should have been held no later than January 11, 2020. On December 28, 2020 a hearing was held with respect to whether to conduct a manual election no later than January 11, 2021. Despite the Board's stated desire to hold elections within a set time period, the Decision was delayed for several weeks and not issued until February 5, 2021. Incredibly, the Decision does not rely on the evidence presented at the hearing regarding positivity and confirmed Covid-19 cases, but rather relies on new "evidence" that was not presented by the parties. More importantly, the parties had no right to respond to the new evidence. Rather, one could conclude that the Decision was delayed until a two-week period of Covid-19 results satisfied the Director's desire of holding a mail ballot election.

In addition to this new evidence, the Decision incredibly relies on a third piece of “evidence” that resulted from the union’s misconduct. Specifically, the Decision’s third piece of evidence that it relies upon is the fact that five bargaining unit employees were quarantining at the time of the hearing due to the Union’s unlawful conduct – the union held an in-person campaign event and did not require employees to space more than six feet apart or to wear masks. Incredibly, the Regional Director found that:

“I am not persuaded by the Employer’s argument that the Union’s actions in holding an in-person union meeting are relevant to my determination on whether to direct a mail ballot election. Whether the Union held an in-person meeting with petitioned-for employees, and whether that meeting led to Covid-19 positive employees, is immaterial to my determination...”

In sum, if the Decision stands, one can argue that there are no further in-person elections until the Pandemic ends – this case involves a rural county, essential workers, and an employer willing to fully comply with the Board’s safe election requirements. More importantly, if this Decision stands, Unions have a roadmap to mail ballot elections – hold in-person events and put bargaining unit employees in need for quarantining. Finally, if this Decision stands, the Director can simply delay rulings and moot the evidence at the hearing – and the right to be heard – by simply relying on new evidence gathered by the Director. Accordingly, because the Decision runs afoul of basic tenets of fairness and Board authority, it should be reversed and a manual election held in this matter.

II. SUMMARY OF THE EVIDENCE

A. The Evidence Contained In The Record.

1. Detrex Is An Essential Business That Has Worked Throughout The Pandemic.

The Union seeks to represent a bargaining unit employed at Detrex’s Ashtabula, Ohio manufacturing plant. (Detrex’s Post Hearing Brief (hereinafter “Post Hearing Brief at ___”) at 2).

The plant manufacturers chemicals and the bargaining unit employees normally wear personal protective equipment while working. (Post Hearing Brief at 2).

Due to the nature of the plant's production, the plant was considered an essential business and it was permitted by state and federal authorities to operate throughout the Covid-19 Pandemic. (Post Hearing Brief at 2). In fact, the plant never shut down and the bargaining unit employees have worked continuously since March, 2020. at (Post Hearing Brief 2). The bargaining unit members wear masks and the plant has had Covid-19 policies and procedures since March, 2020. (Post Hearing Brief at 2). The six foot rule has been consistently enforced. (Post Hearing Brief at 2). In fact, due to the size of the plant and the nature of the work duties, the employees have significant space when performing their job duties at Detrex. (Post Hearing Brief at 2).

The Covid-19 policies and procedures employed by Detrex have been effective. (Post Hearing Brief at 2). There have been few Covid-19 positive tests in 2020 at Detrex's Ashtabula, Ohio plant. (Post Hearing Brief at 2). More importantly, no bargaining unit employee reported a serious illness in 2020 due to Covid-19. (Post Hearing Brief at 2). Finally, despite complying with the Covid-19 directives, the plant has remained productive and efficient. (Post Hearing Brief at 2).

2. Ashtabula County, Ohio Is Not A Hot Spot.

Ashtabula County, Ohio is a county east of Cleveland, Ohio. (Post Hearing Brief at 3). The county is approximately seventy miles from Cleveland and its population is under 100,000 citizens. (Post Hearing Brief at 3).

As of the submission of the Post Hearing Brief, Ashtabula County has only had 3,339 total Covid-19 cases (3,277 confirmed cases). (Post Hearing Brief at 3). As of the submission of

the Post Hearing Brief, in the zip code where the plant is located (44004), there have been 1,204 cases per 100,000 citizens. (Post Hearing Brief at 3). Similarly, as of the submission of the Post Hearing Brief, in the last two weeks, there has been ninety-two Covid-19 cases in 44004. (Post Hearing Brief at 3). Finally, the infection rate is .87 and is decreasing. (Post Hearing Brief at 3). The positivity rate is 8.1% which indicates adequate testing. (Post Hearing Brief at 3).

The evidence at the hearing demonstrated that Covid-19 cases in Ashtabula County, Ohio have been falling. (Post Hearing Brief at 3). The seven day average was twenty-eight cases on December 28, 2020, but on December 28, 2020 there were only fifteen cases reported. (Post Hearing Brief at 3). Covid.Act Now sets forth statistics for Ohio's 88 counties. (Post Hearing Brief at 3). The site reported that Ashtabula County, Ohio is the 87th out of 88 counties in daily cases per 100,000 reported (29.5), 40th out of 88 counties in infection rate (.87), and 80th out of 88 counties in positivity rate (12.5%). (Post Hearing Brief at 3).

3. The In-Person Voting Arrangements.

There is no current outbreak at the Detrex plant. (Post Hearing Brief at 3).¹ At the time of submitting the Post Hearing Brief, two employees had tested positive for Covid-19, one of which was due to involvement in Union activity. (Post Hearing Brief at 3).²

Most importantly, due to the size of the Detrex facility, there are two buildings on the property that can be established in a manner that the election can be held in a manner that meets state and local gathering sizes and social distancing requirements. (Post Hearing Brief at 3) Both locations meet the requirements of GC Mem 20-10. (Post Hearing Brief at 4). In addition, the employer will abide by GC Mem 20-10. (Post Hearing Brief at 4).

¹ This holds true as of the date of submitting this Request for Review.

² Both employees completed their required quarantine period, have fully recovered, and have rejoined the workforce. There currently are no employees who have tested positive for Covid-19 or who are subject to quarantine as of the submission of this Request for Review

There are two potential polling locations that meet the requirements of GC Mem 20-10 at the plant. (Post Hearing Brief at 4). The location that Detrex proposes is in a secondary production building located inside the Detrex facility. (Post Hearing Brief at 4). The building is stand alone with separate entrances and exits for the voting employees. (Post Hearing Brief at 4). The floors are clean and will be marked in order to keep social distancing and direct employees and guests through the proper entrances and exits. (Post Hearing Brief at 4). The ceilings are very high – over thirty feet. (Post Hearing Brief at 4). The polling area is very large – approximately 5000 ft² (100ft x 50ft). (Post Hearing Brief at 4). Finally, there is a large garage door in the room that will be opened during the voting in order to verify airflow during the election process. (Post Hearing Brief at 4).

Due to the small size of the bargaining unit, the voting can be managed in a manner that will verify social distancing. (Post Hearing Brief at 4). Plexiglass and other personal protective equipment will be provided in order to verify safety. (Post Hearing Brief at 4). Finally, all of the Board's Covid-19 safety procedures will be followed and certified in advance of the election. (Post Hearing Brief at 4).

4. The Union's Inconsistent Positions.

The Union took the position at the hearing that an in-person, manual election was not safe. However, the Union held an in-person campaign meeting in late 2020. (Post Hearing Brief at 4). Ohio's Covid-19 restrictions prohibit mass gatherings greater than ten employees. (Post Hearing Brief at 4). In addition, Ohio's Covid-19 restrictions require participants of mass gatherings to keep six foot distance and to wear masks. (Post Hearing Brief at 4).

Despite the Union's arguments against an in-person vote, the Union's campaign meeting had more than ten participants. (Post Hearing Brief at 4). In addition, the bargaining unit

employees reported that masks were not required, few bargaining unit employees wore masks during the meeting, and the six foot distance was not enforced. (Post Hearing Brief at 5). Rather, the bargaining unit employees sat within feet of each other for a prolonged period of time. (Post Hearing Brief at 5).

One employee reported an illness on the Monday after the Union's meeting. (Post Hearing Brief at 5). The employee was tested and reported a positive Covid-19 test result. (Post Hearing Brief at 5). Due to the close contact that this employee had with other bargaining unit employees, multiple employees missed work, were quarantined, and had to be tested for Covid-19. (Post Hearing Brief at 5). Luckily, only one bargaining unit employee tested positive. (Post Hearing Brief at 5).

B. The Decision.

This matter was set for an election to take place on or before January 11, 2021. In accordance with that schedule, the Board held a hearing as to the election on December 29, 2020. Post Hearing Briefs were then submitted by January 6, 2021. Despite this accelerated calendar and January 11, 2021 date, the Board – without discussion or notice – waited until February 5, 2021 to issue the Decision.

Although citing to the record in the Decision, the Decision is based exclusively upon data outside of the record and upon the employees who were forced to quarantine as a result of the Union's meeting which unlawfully failed to comply with Ohio's Covid-19 restrictions. (Decision at 2 and 4). Rather, the Decision relies upon data and information for the days leading up to February 5, 2021. (Decision at 2). The Decision highlights alleged increases in the positivity rate of individuals tested in Ashtabula County, Ohio. (Decision at 2). In fact, despite acknowledging that the 7-day positivity rate for Ashtabula County, Ohio was 9.23 percent, the

Decision relies exclusively on a 14-day positivity rate, alleged to be 15.9 percent for Ashtabula County, Ohio. (Decision at 4). The Decision was based upon citations to a variety of sources as to the Covid-19 numbers in Ashtabula County, Ohio. (Decision at 2). None of the sources are from the State of Ohio or Ashtabula County, Ohio. (Decision at 2). Instead, it relied heavily on non-governmental sources and only cited to one governmental source. (Decision at 2). As to that governmental source – the Covid-19 Integrated County View – it differs significantly from the Covid-19 Dashboard compiled by the State of Ohio’s Department of Health. (Decision at 2).

The Regional Director, however, ignores the fact that the cited sources indicate that testing does not include all tests conducted within a jurisdiction. (Decision at footnotes 5-7). In fact, the Regional Director ignores the key fact acknowledged by the sources cited by in the Decision that the data is limited due to a severe lack in Covid-19 testing. (*See generally*, Decision). This fact was highlighted by Detrex in its Post Hearing Brief: “[t]he positivity rate is above five percent, but it’s high because it ‘indicates insufficient testing.’” (Post Hearing Brief at 6). Incredibly, rather than evaluate the sufficiency and reliability of the data based upon the clear fact that testing is insufficient and in very small numbers, the Regional Director, instead, claims that “the Employer acknowledges in its post-hearing brief that the positivity rate in the county is above the Board’s 5 percent threshold.” (Decision at 4). Accordingly, the Regional Director wholly ignores the undisputed fact that the 16.9 percent 14-day positivity rate in Ashtabula County, Ohio cited by the Regional Director is necessarily higher than the real, true number. (Decision at footnotes 5-7).

Finally, and most importantly, the Regional Director ignored the facts related to the Union’s decision to hold a meeting with bargaining unit employees that violated Ohio’s laws with respect to Covid-19. Specifically, the Regional Director held that:

“I am not persuaded by the Employer’s argument that the Union’s actions in holding an in-person union meeting are relevant to my determination on whether to direct a mail ballot election. Whether the Union held an in-person meeting with petitioned-for employees, and whether that meeting led to Covid-19 positive employees, is immaterial to my determination...”

(Decision at 4).

Incredibly, however, the Regional Director found that the aftermath of the Union’s unlawful gathering – that several employees were required to miss work and quarantine as a result of the Union violating Covid-19 safety protocols – was so highly relevant that it based its Decision to conduct the election via mail upon these quarantined employees:

“while the Employer argues that there is no current Covid-19 outbreak at the facility, the fact that 4 employees have tested positive is significant. Two of those employees tested positive recently and 5 employees were quarantining at the time of the hearing.”

Based upon this reasoning, the Regional Director’s Decision finds that having four employees test positive for Covid-19 during the entire pandemic is sufficient to warrant a mail in election. (Decision at 4).

The Regional Director did not provide Detrex with an opportunity to respond to the evidence relied upon that was outside of the record prior to issuing the Decision.

III. ARGUMENT

A. Standard Of Review.

29 CFR 102.67(d) sets forth the grounds for seeking a request for review of a decision issued by the Regional Director. Relevant to this Request for Review, Detrex requests review under the following grounds:

- (d)(1)(ii) a substantial question of law or policy is raised because of the departure from reported Board precedent;

- (d)(2) the Regional Director’s Decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects Detrex;
- (d)(3) the conduct of the ruling made in connection with the proceeding has resulted in prejudicial error; and
- d(4) there are compelling reasons for reconsideration of an important Board rule or policy.

B. The Regional Director Deviated From Clear Board Precedent.

As recognized by the Regional Director in the Decision, “[c]ounty-level positivity rate data should be obtained from official state or local government sources.” (Decision at 4, citing *Aspirus Keweenaw*, 18-RC-263185, 370 NLRB No. 45 (2020)). Despite this clear Board precedent, the Decision fails to cite to a single State of Ohio or Ashtabula County, Ohio source with respect to determining the positivity rate of individuals within Ashtabula County, Ohio. Rather, the Decision heavily relies upon educational and non-government organizational sources. (Decision at 2). In fact, the Decision cites only one governmental source in footnotes 5 and 6. (Decision at 5). This source is not from the State of Ohio or Ashland County, Ohio. Further, the lone governmental source specifically discloses that its data differs from state-issued data sources:

“[d]ata presented here may differ from data on state and local websites. This may be due to differences in how data were collected (e.g., date specimen obtained, or date reported for cases) or the metrics are calculated. **Data presented here use standard metrics across all counties in the United States. For the most accurate and up-to-date data for a specific county or state, visit the relevant state or local health department website.**”

(See Decision at footnotes 5 and 6) (emphasis added).

Accordingly, the Regional Director’s deviation from the clear precedent set in *Keweenaw* raises significant issues as to which law is applicable to the case at hand. Further, the Regional Director’s deviation from *Keweenaw* raises significant public policy concerns – namely the Board’s applicable standard and application of that standard with respect to conducting manual

as opposed to mail-in elections during Covid-19. Accordingly, the Decision should be reversed based upon the significant legal and public policy concerns raised by the Regional Director's clear deviation from clear Board precedent.

C. The Regional Director Made An Erroneous Decision With Respect To A Substantial Factual Issue Causing Prejudice To Detrex.

1. The Regional Director Incorrectly Relied Upon Non-Ohio And Non-Ashtabula Data.

As set forth above, the Regional Director failed to rely upon *any* Ohio or Ashtabula, County, Ohio sourced with respect to Covid-19 data. Instead, it relied heavily on non-governmental sources and only cited to one governmental source. As to that governmental source – the Covid-19 Integrated County View – it differs significantly from the Covid-19 Dashboard compiled by the State of Ohio's Department of Health.³

In fact, as of February 9, 2021, the Ohio Department of Health reports 190 confirmed cases within the past 14 days. Incredibly, the CDC data relied-upon by the Regional Director reports a total of 281 cases within the past **seven days**.⁴ These numbers differ significantly. Further, these differences highlight the unreliability with respect to the sources utilized by the Regional Director in reaching the Decision.

To be sure, the Decision is based almost exclusively upon a non-Ohio and non-Ashtabula County, Ohio generated positivity rate. (See Decision at 2 and 4). Importantly, these sources specifically acknowledge that testing is inadequate. Accordingly, any positivity rate will necessarily be much higher than the true rate and is not a reliable or meaningful statistic.⁵

³ The State of Ohio's Department of Health's Covid-19 Integrated County View can be located at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/dashboards/key-metrics/cases-by-zipcode>. (last accessed 2/10/2020).

⁴ The CDC source does not provide the option to view total cases over the previous 14 days.

⁵ See <https://nymag.com/intelligencer/2020/12/the-problem-with-the-covid-19-positivity-rate.html>; see also <https://www.wsj.com/articles/covid-19-positivity-rate-might-not-mean-what-you-think-it-does-11599211800> (last accessed 2/10/2020).

Indeed, testing is largely if not exclusively done on individuals who are experiencing Covid-like symptoms. This testing will certainly result in a higher number of Covid-19 positive tests than random testing of the entire population. For example, one would expect that the positivity rate for reasonable cause drug testing to be very high and much higher than the overall percentage of workers who would have a positive drug test. This is so because reasonable cause testing targets individuals who are presumed to be under the influence of drugs – the same scenario presented with only testing individuals who experience Covid-like symptoms.

Simply put, the data relied-upon by the Regional Director is inadequate, unreliable, and improper according to Board precedent. The Regional Director should have utilized the data provided by the State of Ohio should have been utilized in issuing the Decision. This data provides the most accurate accounting and is the data *required* to be sued by *Keweenaw*. The Regional Director's decision to erroneously rely-upon non-Ohio and non-Ashtabula County, Ohio data has resulted in a widely inaccurate and skewed Covid-19 positivity rate which, in turn, has resulted in severe prejudice to Detrex by virtue of the Regional Director's decision to order a mail-in election. Accordingly, the Regional Director erroneously relied incorrect, inapplicable, and inappropriate data which has resulted in Detrex being forced to participate in a mail-in election as opposed to a more appropriate manual election. Thus, the Decision should be reversed.

2. The Regional Director Erroneously Concluded That A Mail-In Election Is Appropriate.

Based upon the data sources it compiled, the Regional Director determined that a mail-in election is appropriate. However, the Regional Director does not provide any analysis, reasoning, or otherwise state that a mail-in election is safer than a manual election, nor does the Decision state that Detrex is not capable of safely holding a manual election pursuant to the

requirements and guidelines set forth by the CDC and in *Keweenaw*. Rather, the Regional Director summarily concludes that a mail-in election is “appropriate.” The Regional Director’s decision is erroneous based upon the facts presented at the Hearing.

The factors set forth in *Aspirus Keweenaw*, 18-RC-263185, 370 NLRB No. 45 (2020) support an in-person, manual election. The Union argued two factors in support of its argument to a mail ballot election: (1) Either the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher; and (2) other similarly compelling considerations.

As to statistics, the Union argued that the positivity rate supported the mail ballot election. The Board cautioned that statistics are relevant, but not dispositive of the manual election issue:

Although statistical data regarding infection rates may often have some bearing on the appropriateness of a mail-ballot election, the type, scope, and age of that data may limit a given statistical measure’s relevance. For example, given the significant variations in the prevalence of Covid-19 from locality to locality, broad trends like statewide statistics may be of questionable use in assessing the safety of conducting a manual election at a specific facility, at least when more localized data is available. Likewise, the total number of cases in a given locality since the pandemic’s onset may offer only limited insight into current conditions in that locality.

Rather, the Board held that “[t]o best assess whether safety needs dictate a mail-ballot election, Regional Directors should generally focus their consideration on recent statistics that reflect the severity of the outbreak in the specific locality where the election will be conducted.” In this matter, the statistics strongly support holding an in-person election. The positivity rate is above five percent, but it is high because it “[i]ndicates insufficient testing.” Moreover, all of the

Covid-19 factors are falling and Ashtabula County, Ohio is on the very low end of the county indicator list in Ohio. Accordingly, statistics support holding an in-person election.

As to other similarly compelling considerations, the Union's arguments fail. The bargaining unit will be working on the day of the election. The plant has not had a Covid-19 outbreak and the employees can maintain the six foot distance while working and voting. Detrex has similarly agreed to all of the Board requirements. In fact, Detrex is flexible – whatever safety requirements the Board deems necessary for Detrex, the Board, the Union and the bargaining unit will be implemented. Detrex suggested limiting attendees to the election, asking employees to vote when safe, and to utilize plexiglass in order to protect visitors and monitors. Put simply, Detrex has and will continue to comply with the Covid-19 requirements in order to protect employees and visitors to the plant. Accordingly, the Regional Director's Decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects Detrex.

D. The Conduct Of The Decision Has Resulted In Prejudicial Error.

29 CFR 102.67(a) provides that

“[t]he Regional Director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as the director may deem proper, to...direct an election. A decision by the Regional Director upon the record shall set forth the director's findings, conclusions, and order or direction.”

29 CFR 102.68 sets forth the documents that are contained in the record for purposes of the pre-election hearing. The following documents are considered to be in the record:

“[t]he record in a proceeding conducted pursuant to the foregoing section shall consist of: the petition, Notice of Hearing with affidavit of service thereof, statements of position, responses to statements of position, offers of proof made at the pre-election hearing, motions, rulings, orders, the stenographic report of the hearing and of any oral argument before the Regional Director, stipulations, exhibits, affidavits of service, and any briefs or other

legal memoranda submitted by the parties to the Regional Director or to the Board, and the decision of the Regional Director, if any.”

The record does not include any documents outside of what was presented to the Regional Director or to the Board through these aforementioned proceedings and documents.

Here, as set forth above, the Regional Director relied almost exclusively upon facts outside of the record to reach the Decision. The Regional Director did not provide Detrex an opportunity to review these out-of-record facts prior to issuing the decision. Accordingly, the conduct of the Regional Director in issuing the Decision cause prejudice to Detrex.

Further, and as set forth more fully in Section D, the Regional Director’s extensive and unnecessarily delay in issuing the Decision caused Detrex prejudice.

E. Compelling Reasons Exist To Review The Decision.

1. *Keweenaw* Strongly Supports A Manual Election.

In *Keweenaw*, the Board verified that it “strongly favors manual elections” when presented with a union petition:

While the Covid-19 pandemic indisputably warrants mail-ballot elections in appropriate circumstances, **the Board’s existing precedent strongly favors manual elections**. Manual elections permit in-person supervision of the election, promote employee participation, and serve as a tangible expression of the statutory right of employees to select representatives of their own choosing for the purpose of collective bargaining, or to refrain from doing so. These reasons remain valid today and continue to support the Board’s longstanding preference for manual elections.

Keweenaw, 370 NLRB No. 45.

The factors set forth in *Aspirus Keweenaw*, 18-RC-263185, 370 NLRB No. 45 (2020) support an in-person, manual election. The Union argued two factors in support of its argument to a mail ballot election: (1) Either the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity

rate in the county where the facility is located is 5 percent or higher; and (2) other similarly compelling considerations.

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Rather, the Board held that “[t]o best assess whether safety needs dictate a mail-ballot election, Regional Directors should generally focus their consideration on recent statistics that reflect the severity of the outbreak in the specific locality where the election will be conducted.” In this matter, the statistics strongly support holding an in-person election. The positivity rate is above five percent, but it is high because it “[i]ndicates insufficient testing.” Moreover, all of the Covid-19 factors are falling and Ashtabula County, Ohio is on the very low end of the county indicator list in Ohio. These facts hold true with respect to the data submitted by Detrex in its Post Hearing Brief and with respect to the data as of the date of submitting this Request for Review. In fact, using the Regional Director's lone governmental source relied-upon in the Decision, the seven-day positivity rate for Ashtabula has decreased to 7.24% - a 21.6% decrease from the number cited by the Regional Director in the Decision.⁶ Further, and even more importantly, as set forth above, the appropriate data from the State of Ohio reports significantly

⁶ <https://covid.cdc.gov/covid-data-tracker/#county-view>.

lower confirmed, positive tests than the improper sources relied upon in the Decision. Accordingly, statistics support holding an in-person election.

As to other similarly compelling considerations, the Union's arguments fail. The bargaining unit will be working on the day of the election. Accordingly, the bargaining unit employees will be in-person working on that day, but will not be permitted to participate in an in-person election utilizing the same safety protocols permitting those employees to safely work. The plant has not had a Covid-19 outbreak and the employees can maintain the six foot distance while working and voting. Detrex has similarly agreed to all of the Board requirements. In fact, Detrex is flexible – whatever safety requirements the Board deems necessary for Detrex, the Board, the Union and the bargaining unit will be implemented. Detrex suggested limiting attendees to the election, asking employees to vote when safe, and to utilize plexiglass in order to protect visitors and monitors. Put simply, Detrex has and will continue to comply with the Covid-19 requirements in order to protect employees and visitors to the plant.

2. Delay In The Decision.

The delay in the Regional Director's Decision is also a compelling reason to review the Decision. Despite the accelerated calendar with respect to the hearing and proposed date for an election during the first two weeks of January, the Decision was not issued until February 5, 2021. The data and statistics presented by Detrex at the Hearing and in the Post Hearing brief were the current data and statistics for Ashtabula County, Ohio for the time period of the proposed election. Rather than issue the decision in the time period contemplated by the Board and the Parties with respect to the election, the Decision was issued weeks later. The data and statistics presented by Detrex firmly supported a manual election under *Keweenaw*. The Delay in the decision rendered this data and statistics moot, thereby unfairly prejudicing Detrex.

Importantly, the data relied upon in the Decision is (1) inappropriate; and (2) even if not inappropriate, now moot. The current data for Ashtabula County, Ohio firmly support a manual election under *Keweenaw*. And, to the extent that the Regional Director disagrees with respect to the current data, the undue prejudice caused by the delay in the Decision warrants a decision to delay the election until a time where it is appropriate to conduct a manual election.

3. The Union Violated Ohio And CDC Guidelines, Causing Employees To Quarantine For The Final Weeks Of 2020.

Finally, as set forth above, the Union conducted an in-person meeting in December 2020 that did not comply with the Ohio and CDC guidelines. The meeting consisted of bargaining unit employees. The employees were not required to wear masks and proper social distancing was not enforced. As a result, several employees did not wear masks and sat within six feet of other employees for prolonged periods of time. Unfortunately, one employee who attended the meeting tested positive for Covid-19. This resulted in several employees missing work and being required to quarantine. Thus, the Union should not be rewarded with a mail-in election, while at the same time organizing Union meetings that fail to comply with Ohio law and ultimately caused several employees to quarantine. Accordingly, the Decision should be reversed on this ground alone.

IV. CONCLUSION

Based on the above-cited arguments and authorities, the Decision should be reviewed and reversed. The Regional Director ignored clear Board precedent, relied-upon inappropriate data, and ignored significant Union misconduct which caused many employees to be quarantined. Accordingly, an in-person, manual election should be held. The election can be safe and the employees have been working throughout the pandemic.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2021, the foregoing was filed with the Region through the Board's electronic filing system and was served upon the following counsel for the Union's via email: Eric Sweeney (esweeney@usw.org); Brad Manzollilo (bmanzollilo@usw.org); and Timothy J. Gallagher (tgallagher@smcnlaw.com).

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